

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES E. PERKINS)	
Claimant)	
VS.)	
)	Docket Nos. 220,416 & 220,417
OTR EXPRESS, INC.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Assistant Director Brad E. Avery on April 23, 1997.

ISSUES

Respondent contends the Assistant Director exceeded his jurisdiction in awarding temporary total disability and medical benefits because:

- (1) The evidence does not establish that claimant suffered personal injury by accident arising out of and in the course of his employment.
- (2) Claimant failed to prove that he gave sufficient notice to satisfy the requirements of K.S.A. 44-520.
- (3) The Assistant Director awarded benefits based upon medical evidence which did not satisfy the standard of proof under the applicable law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes that the Order by the Assistant Director should be affirmed. Issues (1) and

(2), listed above, are issues subject to review. K.S.A. 44-534a. Issue (3) is not one of the jurisdictional issues listed in K.S.A. 44-534a and does not otherwise constitute an allegation that the Assistant Director exceeded his jurisdiction. Accordingly, issue (3) is not subject to review on appeal from a preliminary hearing. K.S.A. 44-551.

After reviewing the evidence, the Appeals Board concludes that claimant suffered additional injury to his low back from the extensive driving in the course of his employment for respondent. This additional injury was more probably than not an aggravation of a preexisting condition but was also, itself, a compensable injury. Claphan v. Great Bend Manor, 5 Kan. App.2d 47, 611 P.2d 180, *rev. denied* 228 Kan. 806 (1980). The Board reaches this conclusion based upon the specific testimony of the claimant that the driving caused a worsening of symptoms as well as from the report of L. F. Glaser, M.D., indicating that it is possible that the condition was aggravated or exacerbated by the persistent whole body vibration from driving. The report from Dr. Glaser does not, as respondent argues, satisfy the burden by itself. The Appeals Board, however, concludes that the combination of the medical report along with claimant's testimony makes it more probably true than not the condition worsened as a result of the driving. In addition, respondent argues that other driving activities away from work could have been a causative factor. While this certainly is true, the most extensive driving was done in the course of the employment for respondent. In addition, the fact that there might have been other factors which contributed would not render the claim noncompensable where, as here, it appears that the driving at work was likely a substantial contributing factor.

The Appeals Board also finds that the notice given by the claimant on December 17, 1996, is sufficient to satisfy the requirements of K.S.A. 44-520. The employer was aware that claimant was continuing to have back difficulties, and on December 17, 1996, claimant states that he advised his employer that he believed the driving was the cause.

WHEREFORE, the Appeals Board finds that the Order by Assistant Director Brad E. Avery, dated April 23, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
D'Ambra M. Howard, Overland Park, KS
Office of Administrative Law Judge, Overland Park, KS
Philip S. Harness, Director